**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 1644/2000

SMT. KESHKALI & ANR.
v
UNION OF INDIA

Date of Judgment: 6th NOVEMBER, 2006

Hon'ble Mr. Justice R. S. Chauhan

Mr. Deepak Goyal for the appellants.
Mr. A.K. Bhargava for the respondent.

By Court:

Having lost her husband in an untoward incident in a train, on behalf of minor son and herself, the claimants-appellants have filed this appeal for enhancement of the compensation, awarded by the Railway Claims Tribunal, Jaipur Bench, vide order dated 18.9.98

The brief facts of the case are that the husband of appellant No.1, Shri Surendra Kumar, was travelling from Surat to Gwalior in Deluxe Express Passenger Train on 23.6.97. In the early morning of 24.6.97 around 5.30 a.m., he somehow fell from the train near Railway Station Hindaun City and died. Since the appellants Nos.1 and 2 lost the only bread earner of the family, they filed a claim petition before the Railway Claims Tribunal, Jaipur Bench. The Railway Administration while filing its written statement denied the

averments and denied the occurrence of the incident. On the basis of the pleadings, the learned Tribunal framed five issues. In order to support her case, the appellant No.1 filed her own affidavit and another affidavit of one Shri Vinod Kumar by way of evidence. On the other hand, the Railway Administration filed two affidavits, one of Shri R.L. Meena and another of Shri Kishan Singh. After going through the entire evidence, the learned Tribunal granted a compensation of Rs. Two lacs vide its order dated 18.9.98. Since the appellants are not satisfied by the said compensation, they have filed the present appeal for enhancement before this Court.

Mr. Deepak Goyal, the learned counsel for the appellants, has argued that the Railway Accident (Compensation) Rules, 1990 (henceforth, to be referred to as 'the Rules', for short) were amended. The said amendment came into force from 1st November, 1997. According to Rule 3 of the said Rules, the amount of compensation payable in respect of death or injuries, shall be as specified in the Schedule. Prior to the amendment, in the case of death, Rs. Two lacs were to be paid as compensation. However, after the said amendment a minimum of Rs. Four lacs is to be paid in case of death. The said amendment had come into force prior to the filing of the claim petition, as the claim petition was filed on 27.11.1997. Therefore, according to the learned counsel the amended rules should have been applied by the Tribunal. But, the Tribunal has

failed to do so. In order to buttress his contention he has relied upon the case of Rathi Menon Vs. Union of India (2001 ACJ 721) and on the case of N. Parmeshwaran Pillai & Anr. Vs. Union of India & Anr. (2002 ACJ 841).

Mr. A.K. Bhargava, the learned counsel for the respondent, has argued that it is the Rule which is operative on the date of he accident which should be applied and not the amended Rules. Therefore, he has supported the impugned order.

We have heard both the learned counsels and have perused the impugned order.

Section 124-A of the Railways act, 1989 (henceforth to be referred to as 'the Act', for short) imposes a liability on the Railway Administration for payment of compensation. It reads as under:-

> **"124A. Compensation on account of untoward incident.--When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependant of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:**
>
> **Provided that no compensation shall be payable under this section by the railway administration if the**

passenger dies or suffers injury due to--

(a) suicide or attempted suicide by him;

(b) self-inflicted injury

(c) his own criminal act;

(d) any act committed by him in a state of intoxication or insanity;

(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.

Explanation.--For the purposes of this section, "passenger" includes---

(i) a railway servant on duty; and

(ii) a person who has purchased a valid ticket for travelling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident."

The said section uses the phrase "to such extent as may be prescribed". The said expression means as prescribed by the Rules made under the Act. Section 129 of the Act empowers the Central Government to make such Rules. In conformity with Section 129 the Rules were enacted. Rule 3(1) states that the amount of compensation payable in respect of death or injuries, shall be as specified in the Schedule. On 1.11.1997 the said Schedule was amended. According to the amended Schedule, the amount of compensation to be paid in case of death was increased from Rs. Two Lakhs to Rs. Four Lakhs. Admittedly, the claim petition was filed on 27.11.97 i.e. after the coming into force of the amended Schedule. In the case of Rathi Menon (supra), the Hon'ble Supreme Court has clearly held as under:-

“23. The collocation of the words 'as may be prescribed' in section 124-A of the Act is to be understood as to mean 'as may be prescribed from time to time'. The relevance of the date of untoward incident is that the right to claim compensation from the railway administration would be acquired by the injured on that date. The statute did not fix the amount of compensation, but left it to be determined by the Central Government from time to time by means of Rules. This delegation to the Central Government indicates that it was difficult for Parliament to fix the amount because compensation amount is a varying phenomenon and the Government would be in a far advantageous position to ascertain what would be the just and reasonable compensation in respect of a myriad different kinds of injuries by taking into account very many factors. What the legislature wanted was that the victim of the accident must be paid compensation and the amount must represent a reality which means the amount should be fair and reasonable compensation. Government have the better wherewithals to ascertain and fix such amount. It is for the said reason that Parliament left it to the Government to discharge that function. Sections 124 and 124-A of the Act speak the same language that 'the railway administration shall be liable to pay compensation'. As pointed above, it is the liability of the railway administration to 'pay compensation to such extent as may be prescribed'. Hence the time of ordering payment is more important to determine as to what is the extent of the compensation which is prescribed by the Rules to be disbursed to the claimant.

24. In this context a reference to section 129 of the Act appears useful. The Central Government is empowered by the said provision to make Rules by notification 'to carry out the purposes of this Chapter'. It is evident that one of the purposes of this Chapter is that the injured victims in railway accidents and untoward incidents must get compensation. Though the word 'compensation' is not defined in the Act or in the Rules it is the giving of an equivalent or substitute of equivalent value. In Black's Law Dictionary, 'compensation' is shown as 'equivalent in money for a loss sustained' or giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; or recompense in value for

some loss, injury or service especially when it is given by statute. It means when you pay the compensation in terms of money it must represent, on the date of ordering such payment, the equivalent value.

25. In this context we may look at section 128(1) also. It says that the right of any person to claim compensation before the Claims Tribunal as indicated in section 124 or 124-A shall not affect the right of any such person to recover compensation payable under any other law for the time being in force. But there is an interdict that no person shall be entitled to claim compensation for more than once in respect of the same accident. This means that the party has two alternatives, one is to avail himself of his civil remedy to claim compensation based on common law or any other statutory provision, and the other is to apply before the Claims Tribunal under section 124 or 124-A of the Act. As he cannot avail himself of both the remedies he has to choose one between the two. The provisions in Chapter XIII of the Act are intended to provide a speedier remedy to the victims of accidents and untoward incidents. If he were to choose the latter that does not mean that he should be prepared to get a lesser amount. He is given the assurance by the legislature that Central Government is saddled with the task of prescribing fair and just compensation in the Rules from time to time. The provisions are not intended to give a gain to the railway administration but they are meant to afford just and reasonable compensation to the victims in a speedier measure. If a person files a suit the amount of compensation will depend upon what the court considers just and reasonable on the date of determination. Hence when he goes before the Claims Tribunal, claiming compensation, the determination of the amount should be as on the date of such determination.

26. The asinine consequence of accepting the interpretation placed by the Division Bench of the High Court can be demonstrated through an illustration. If a person sustained injury as described in rule 3 (2) of the Rules, in an accident in a train on 31.10.1997, and another person sustains the same kind of injury in another accident in a train the next day, i.e., 1.11.97, when both persons made separate applications before the same Claims Tribunal for compensation, the

Tribunal can award Rs. 2,00,000 only in the first case and Rs. 4,00,000 in the second case. What a woeful discrimination, if not a glaringly unfair differentiation. See the interval between the two accidents of identical features. It was only a few hours, but the difference in the compensation amount is enormously high. Any court should avert an interpretation which would lead to such a manifestly absurd fall out, unless the court is compelled otherwise by any mandatory provision."

Therefore, the Hon'ble Supreme Court clearly held that the compensation payable would be as given by the law on the date of determination of the compensation by the Railway Tribunal. Since the impugned order was passed on 18.9.98 i.e. well after the amendment had come into force, the Tribunal was duty bound to give the benefit of the amended Schedule. Therefore, we enhance the compensation from Rs. Two lacs to Rs. Four lacs. We further direct that Rs. Two lacs shall be kept for appellant No.2 in fixed deposit in a Nationalised Bank. The said amount shall be paid to the appellants within a period of two months alongwith an interest of 12% per annum from the date of filing of the claim petition till the realisation.

In the result, this appeal is allowed. There shall be no order as to costs.

(R.S. CHAUHAN) J.

MRG.